85-546

No.

In the Supreme Court of the United States

OCTOBER TERM, 1985

UNITED STATES OF AMERICA, PETITIONER

v.

FLORENCE BLACKETTER MOTTAZ, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

CHARLES FRIED
Acting Solicitor General
F. HENRY HABICHT II
Assistant Attorney General
LOUIS F. CLAIBORNE
Deputy Solicitor General
EDWIN S. KNEEDLER
Assistant to the Solicitor General
DAVID C. SHILTON
J. CAROL WILLIAMS
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

501

QUESTION PRESENTED

Whether either the six-year statute of limitations in 28 U.S.C. 2401(a) or the twelve-year statute of limitations under the Quiet Title Act, 28 U.S.C. 2409a(f), bars a suit brought by the heir of an Indian allottee against the United States to recover land (or its value in money damages) to which the United States acquired title 27 years earlier.

PARTIES TO THE PROCEEDING

The only parties to the proceeding are those listed in the caption. Respondent sought to represent a class of all similarly situated Indians residing in the United States. However, the district court dismissed the suit on statute of limitations grounds, and it therefore did not certify a class.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases Continued — Page

Constitution and statutes: — Page

In the Supreme Court of the United States

OCTOBER TERM, 1985

No.

UNITED STATES OF AMERICA, PETITIONER

v.

FLORENCE BLACKETTER MOTTAZ, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Acting Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-8a) is reported at 753 F.2d 71, and the memorandum order of the district court (App., *infra*, 9a-11a) is unreported.

JURISDICTION

The judgment of the court of appeals (App., *infra*, 12a) was entered on January 18, 1985, and a petition for rehearing was denied on April 29, 1985 (App., *infra*, 13a). By order dated July 22, 1985, Justice Blackmun extended the time within which to file a petition for a writ of certiorari to and including September 26, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

25 U.S.C. 345 and 483, and 28 U.S.C. 1353, 2401, 2501 and 2409a, are reproduced in relevant part at App., *infra*, 14a-17a.

STATEMENT

1. On December 5, 1905, three Chippewa Indian ancestors of respondent Mottaz received allotments of land on the Leech Lake Reservation in Cass County, Minnesota, pursuant to the General Allotment Act of February 8, 1887, 25 U.S.C. 331 *et seq.*, and the Nelson Act of January 14, 1889, 25 Stat. 642 *et seq.* The allotments were held in trust by the United States for periods that eventually were extended indefinitely by Section 2 of the Indian Reorganization Act of 1934, 25 U.S.C. 462. Respondent inherited a one-fifth interest in one of the allotments and a one-thirtieth interest in each of the other two (App., *infra*, 2a).

Under 25 U.S.C. 483, the Secretary of the Interior "is authorized in his discretion, and upon application of the Indian owners, to issue patents in fee, to remove restrictions against alienation, and to approve conveyances, with respect to lands or interests in lands held by individual Indians." In the early 1950s, some of the individuals who also owned fractional interests in the three allotments at issue in this case petitioned the Department of the Interior to sell the allotments. In May 1953, the Office of Indian Affairs of the Department sent letters to respondent pertaining to each of these allotments. App., *infra*, 2a. The letters read in part (*ibid.* (emphasis added)):

> Some of the owners have requested the sale of this land. We have appraised both land and timber, if any, and as soon as we get the consent to sell, an effort will be made to obtain a buyer by advertising

> for sale bids. This land will not be sold unless the high bid is equal to, or more than, the appraisal value. *If no reply is received from you within ten (10) days, it will be assumed that you have no objection to the sale.*

Respondent did not object to the sale of the allotments (*id.* at 9a), although she also did not sign and return to the Office of Indian Affairs a form that expressly consented to the sales (*id.* at 3a). The Interior Department accepted bids for the allotments, and in 1954, each allotment was sold to the United States Forest Service. The normal procedure was then to distribute the proceeds of the sales to the heirs who held an interest in the allotments (*id.* at 9a), and there is no allegation in the complaint in this case that such a distribution did not occur with respect to the three allotments at issue. Those tracts are now included in the Chippewa National Forest (*id.* at 3a).

In 1967, respondent visited the Bureau of Indian Affairs (BIA) and expressed a desire to sell all of her inherited land. In its written response to that visit, BIA identified the interests in allotments that respondent then held. BIA's response did not mention any interest in the three allotments at issue here. DX A.8; see App., *infra*, 3a. In response to another inquiry in 1981, BIA again provided respondent with a list of all her current interests in allotments. BIA also indicated that respondent once had held interests in the three allotments that were sold to the Forest Service in 1954. However, it informed her that those interests had been identified by BIA as so-called "Secretarial Transfer" cases, which referred to transactions in which not all of the heirs had consented to the conveyance of their interests in a particular allotment. C.A. App. 36.[1] BIA had instituted a project in the late 1970s for the identification of such

[1] "C.A. App." refers to the appendix in the court of appeals.

potential claims that might be affected by the statute of limitations in 28 U.S.C. 2415, a provision applicable to trespass damage actions brought by the United States on behalf of Indians. App., *infra*, 3a. See generally *County of Oneida* v. *Oneida Indian Nation*, No. 83-1065 (Mar. 4, 1985), slip op. 14-16 ("*Oneida II*").[2]

2. On December 30, 1981, respondent filed this action in the United States District Court for the District of Minnesota (C.A. App. 5). She alleged, inter alia, that the sales of the three allotments were made without her consent or permission and were illegal and void (*id.* at 3); that the United States breached its fiduciary duty when it transferred the land without obtaining her consent (*id.* at 4-5); and that her property was taken for a public use without just compensation, in violation of the Fifth Amendment (C.A.App. 4-5). As relief, respondent sought damages in the amount of the current fair market value of the land or, in the alternative, rescission of the sales, with title to the allotments to revest in the appropriate descendents, heirs, and assigns (*id.* at 5; App., *infra*, 3a-4a). Respondent also sought to represent a class of all Indian allotees and their descendents, heirs and assigns who were affected by similar sales and

[2] 28 U.S.C. 2415, which was originally enacted in 1966 (Act of July 18, 1966, Pub. L. No. 89-505, 80 Stat. 304 *et seq.*), imposes a statute of limitations on actions brought by the United States generally, including those brought on behalf of Indians. Section 2415 originally imposed a six-year limitation on the United States' bringing of contract claims, a three-year limitation on tort claims, and a six-year limitation on trespass actions and certain other actions. Prior to 1982, the statute had been amended on a number of occasions to extend the limitations period for damage actions relating to Indian lands. Act of July 18, 1972, Pub. L. No. 92-353, 86 Stat. 499 *et seq.*; Act of Oct. 13, 1972, Pub. L. No. 92-485, 86 Stat. 803; Act of Aug. 15, 1977, Pub. L. No. 95-103, 91 Stat. 842 *et seq.*; Act of Mar. 27, 1980, Pub. L. No. 96-217, 94 Stat. 126 *et seq.*

In connection with the 1982 amendments to 28 U.S.C. 2415, the Secretary was required to prepare a list of Indian claims that were

transfers of Indian land located anywhere in the United States (C.A. App. 3-4). Following a pretrial hearing on June 6, 1982, respondent dismissed without prejudice her demand for rescission of the sales and revesting of title in respondent and others (C.A. App. 10), leaving only her demand for damages (App., *infra*, 4a).

On October 7, 1983, the district court granted the United States' motion for summary judgment, holding that this suit is barred by the six-year statute of limitations in 28 U.S.C. 2401(a), which provides that "every civil action" commenced against the United States shall be barred unless it is filed within six years after the right of action first accrues. App., *infra.*, 9a-11a. The court held that respondent's cause of action accrued when she learned of the sales, and it found that "[t]he deposition of [respondent] clearly reveals that she had knowledge of the sales in 1954" (App., *infra*, 10a). The court therefore held that this suit is time-barred under 28 U.S.C. 2401(a) (App., *infra*, 10a). The district court also rejected respondent's argument that the statute of limitations in 28 U.S.C. 2415 for trespass damage actions relating to Indian lands overrides the six-year statute of limitations in 28 U.S.C. 2401(a). The court reasoned that "28 U.S.C. § 2415 applies to actions brought *on behalf of* a recognized tribe or individual

subject to the statute of limitations. Those claims that were listed were preserved; those that were not listed were time-barred after 60 days. Indian Claims Limitations Act of 1982, Pub. L. No. 97-394, 96 Stat. 1976 *et seq.*, 28 U.S.C. 2415 note. See *Oneida II*, slip op. 15. The legislative history of the 1982 amendments describes "Secretarial transfer" cases as trespass claims that resulted from the Secretary's sale of trust land in heirship status without the consent of all the heirs. See H.R. Rep. 97-954, 97th Cong., 2d Sess. 7 (1982).

Indian," not "claims *against* the United States," which are governed by 28 U.S.C. 2401(a). App., *infra*, 10a-11a (emphasis in original).

3. The court of appeals reversed and remanded (App., *infra*, 1a-8a). Although respondent had dismissed her complaint insofar as it sought rescission of the sales and the revesting of title in respondent and others, the court of appeals did not read this amendment to abandon the "gist" of her complaint, "which was that the sale of the land was illegal and void and did not transfer title" (*id.* at 4a). Instead, the court believed that "[respondent's] claim for damages in the amount of the fair market value of the land must be construed as equivalent to a claim for return of the land itself" (*id.* at 6a). The court believed "as a matter of policy" that it would be an appropriate remedy to permit respondent to seek compensation rather than a return of the land, because the parcels are incorporated in an inaccessible national forest where they have little value to respondent (*id.* at 6a-7a).

In its brief discussion of the statute of limitations issue (App., *infra*, 4a-6a), the court read this Court's decision in *Ewert* v. *Bluejacket*, 259 U.S. 129 (1922), to stand for the proposition that a sale of Indian land in violation of federal restrictions on alienation does not transfer title and that neither the allottee nor his heirs may be barred by a state statute of limitations from bringing suit to establish that they retain title to the land (App., *infra*, 4a-5a). The court acknowledged that the parties had not identified any case that considered whether *Ewert* v. *Bluejacket* also prevents the application of *federal* statutes of limitations to Indian land claims (App., *infra*, 5a-6a). However, without discussion or citation to supporting authority, the court concluded that "Congress has not repudiated its policy of protecting Indian land by providing that claims against the

United States for title to wrongfully alienated allotments are barred by a statute of limitations" (*id.* at 6a). In the court's view, *Ewert* v. *Bluejacket* stands for the proposition that if the underlying sale of land is void, "the concept that a cause of action 'accrues' at some point [for purposes of a statute of limitation] is inapplicable because the allottee simply retains title all along" (*id.* at 6a).

The court of appeals then remanded the case for further proceedings (App., *infra*, 7a-8a). In doing so, the court held that respondent's failure to interpose an objection to the sale of the allotments in 1953 would not in itself constitute consent to the sale, but it held that if respondent in fact received payment for her interests in the land in 1955, it "may be assumed that she consented to the sale and thus that she does not have a cause of action" (*id.* at 7a).[3] The court acknowledged the government's argument that "the payment records may be difficult if not impossible to recover and that this is a good reason why a statute of limitations should bar [respondent's] claim" (*id.* at 7a n.8). Nevertheless, the court held that "[t]he government must bear the burden of proving that it paid [respondent] and therefore that it holds valid title to the [three] allotments" (*id.* at 7a).

REASONS FOR GRANTING THE PETITION

Although respondent knew of the sale by the Secretary of her fractional interests in the three allotments in 1954, and although the BIA's listing of her holdings in 1967 confirmed that the United States no

[3] The court left open for decision on remand the question whether 25 U.S.C. 483 prevented the Secretary from selling the allotments without respondent's consent (App., *infra*, 7a). Although the court seemed to indicate that this issue and the question whether payment was made bore on the statute of limitations issue, in reality they go directly to the merits of whether an unauthorized sale occured in 1954.

longer held those interests in trust for her, the court of appeals held that this suit filed 27 years after the sale is not barred by the statute of limitations. This result is plainly erroneous. The suit is barred either by the 12-year statute of limitations under the Quiet Title Act, 28 U.S.C. 2409a(f), or by the general statute of limitations in 28 U.S.C. 2401(a), which provides that "every civil action" against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. This follows, we submit, from *Block* v. *North Dakota*, 461 U.S. 273, 287-290 (1983), where it was held that the broad language in the Quiet Title Act imposing a statute of limitations on "[a]ny civil action," and the policies of respose reflected in that provision, require applying the statute of limitations to a suit brought by a State in the same manner as it applies to suits brought by other persons. The same principle requires the application of the statutes of limitations in the Quiet Title Act and 28 U.S.C. 2401(a) to civil actions against the United States that are brought by Indians. The implied exception the court of appeals fashioned for suits brought by Indians therefore cannot be squared with *Block* v. *North Dakota*.

Moreover, whatever the court of appeals' theory of this suit—whether it is a suit to quiet title, recover damages, or obtain an allotment—, its holding conflicts with decisions of other courts of appeals that have applied the applicable statute of limitations to suits brought by Indians under each of these theories. The decision below is of substantial practical importance as well, in view of the pendency of numerous other Indian claims based on comparably stale transactions. Review by this Court therefore is warranted.

1. The principles that govern the statute of limitations issue in this case have been firmly established by this Court. As the Court recently observed in another case

involving a dispute over title to land, "[t]he basic rule of federal sovereign immunity is that the United States cannot be sued at all without the consent of Congress." *Block* v. *North Dakota*, 461 U.S. at 287. The Court in that case reiterated the rule that even "[t]he States of the Union, like all other entities, are barred by federal sovereign immunity from suing the United States in the absence of an express waiver of this immunity by Congress." *Id.* at 280. This principle applies equally to suits by Indians. See, *e.g.*, *United States* v. *Mitchell*, 445 U.S. 535, 538 (1980).

"A necessary corollary of this rule is that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied." *Block* v. *North Dakota*, 461 U.S. at 287. This corollary weighs equally against recognition of implied exceptions to the statute of limitations that Congress has imposed as a condition on its consent to suit. See, *e.g.*, *United States* v. *Kubrick*, 444 U.S. 111, 117-118 (1979); *Soriano* v. *United States*, 352 U.S. 270, 275-276 (1957). Indeed, the terms of Congress's consent—including the applicable statute of limitations—" 'define th[e] court's jurisdiction to entertain the suit.' " *Lehman* v. *Nakshian*, 453 U.S. 156, 160 (1981), quoting *United States* v. *Testan*, 424 U.S. 392, 399 (1976), and *United States* v. *Sherwood*, 312 U.S. 584, 586 (1941). See *Munro* v. *United States*, 303 U.S. 36, 41 (1938); *Finn* v. *United States*, 123 U.S. 227, 233 (1887). See also *United States* v. *Mitchell*, 463 U.S. 206, 212 (1983).

The court of appeals in this case failed to respect these principles; in fact, it did not even discuss them. Instead, citing only *Ewert* v. *Bluejacket* and other decisions holding that *state* statutes of limitations do not bar suits by Indians against *private* parties, the court of appeals

held that the explicit *federal* statute of limitations in 28 U.S.C. 2401(a) that is applicable to "every civil action" against the *United States* does not apply to this suit by an Indian against the United States. The court of appeals' error was compounded by its failure even to identify the particular statute that it believed gave Congress's consent to this suit and by its evident confusion regarding the relief respondent seeks and the effect the nature of that relief has on the determination of which statute of limitations applies. But as we demonstrate in the next section, this suit is clearly barred by the statute of limitations no matter what legal theory of the suit the court of appeals intended to adopt.

2. a. As we have pointed out above (see page 5, *supra*), respondent dismissed the complaint in this suit insofar as it sought rescission of the 1954 sale of the three allotments and the revesting of title in respondent and the other heirs of the original allottees. This left only her claim for money damages. If we accept respondent's partial dismissal at face value, respondent's remaining suit for damages would appear to be one arising under the Tucker Act, 28 U.S.C. 1346(a)(2), in which event it is barred by the six-year statute of limitations that applies to such claims filed in district court by virtue of 28 U.S.C. 2401(a). See pages 14-17, *infra*.

The court of appeals, however, elected not to read respondent's partial dismissal as an abandonment of her basic contention that the sale of the parcels without her consent was void and that she therefore retains title to the land (App., *infra*, 4a, 6a). The court believed that the claim for damages should be construed as the equivalent of a claim for return of the land itself, because in its view respondent should be permitted to demand money damages in lieu of her interest in the land because the allotment is inaccessible to her in the Chippewa National Forest (*id.* at 6a-7a). The court

of appeals' conclusion that respondent continued to assert a claim of title to the land is quite strained. But if the court of appeals is correct in this regard, then this suit arises under the Quiet Title Act, 28 U.S.C. 2409a, and it is barred by the 12-year statute of limitations in that Act.

In the Quiet Title Act (QTA), Congress consented, with certain exceptions, to the naming of the United States as a party defendant in a civil action "to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights." 28 U.S.C. 2409a(a).[4] This Court held in *Block* v. *North Dakota* that "Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property." 461 U.S. at 286 (footnote omitted). The Court applied this rule in *Block* v. *North Dakota* to hold that a state may bring an action only under the QTA to establish its title to real property in which the United States claims an interest and that the procedural provisions of the QTA cannot be avoided by suing a federal officer. 461 U.S. at 280-286. So, too, the QTA is the exclusive means by which an Indian may bring an action, such as the instant suit, that challenges the United States' title to real property.[5]

---

[4] Congress included in 28 U.S.C. 2409a(a) certain exceptions to this waiver of sovereign immunity—*e.g.*, for suits concerning trust or restricted Indian lands or actions that could be brought under several specified statutory provisions, such as the Tucker Act (28 U.S.C. 1346, 1491), and the McCarran Amendment (43 U.S.C. 666), which consents to the naming of the United States in certain water rights adjudications. See, *e.g.*, *Arizona* v. *San Carlos Apache Tribe*, 463 U.S. 545 (1983).

[5] That Congress specifically focused on Indians when it enacted the QTA is demonstrated by the fact that the QTA expressly "does not apply to trust or restricted Indian lands." 28 U.S.C 2409a(a).

The Court likewise held in *Block* v. *North Dakota* that a state, like any other party who wishes to take advantage of the waiver of sovereign immunity in the QTA, must comply with the statute of limitations in 28 U.S.C. 2409a(f), which requires that "[a]*ny* civil action" under the QTA shall be barred unless it is brought within 12 years of the date on which it accrued. The Court relied on this all-inclusive statutory language, the absence of any indication in the legislative history of the QTA that suits brought by states were meant to be excluded, and the necessarily general policy of repose embodied in the limitations period to protect the national public interest. 461 U.S. at 287-290. These same considerations require the conclusion that the statute of limitations in 28 U.S.C. 2409a(f) also applies to suits brought by Indians to contest the United States' title to real property. See *Grosz* v. *Andrus*, 556 F.2d 972, 974-975 (1977).

Section 2409a(f) provides that an action under the QTA "shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." In this

---

This language was intended to exempt from Congress's waiver of sovereign immunity actions to quiet title to land that the United States holds in trust for Indians, and thereby to protect the United States and the Indian beneficiaries from litigation and adverse claims by others. See S. Rep. 92-575, 92d Cong., 1st Sess. 2 (1971); *Block* v. *North Dakota*, 461 U.S. at 283, 285. This exception does not exclude suits brought *by* Indians against the United States to challenge the United States' title to real property that it does *not* ostensibly hold in trust for Indians, but instead holds for other purposes (such as the National Forest in this case). See, *e.g.*, *Grosz* v. *Andrus*, 556 F.2d 972 (9th Cir. 1977). The absence of a parallel exception for suits in which Indians are plaintiffs reinforces the conclusion that such suits are within the scope of the QTA. As a result, an Indian plaintiff is treated the same as any other person who has a claim adverse to that of the United States, and the QTA accordingly is the Indian's exclusive avenue of relief.

case, the district court found that respondent knew of the sales in 1954 (Pet. App. 10a). This suit, which was commenced in 1981, more than a quarter of a century later, therefore is clearly barred by the 12-year statute of limitations under the QTA.

Although the court of appeals understood respondent to be asserting a claim of title, it did not even mention the applicability of the QTA (App., *infra*, 6a-8a).[6] The court of appeals' refusal to hold that respondent's claim is subject to and barred by the 12-year statute of limitations under the QTA was clearly in error. By contrast, the Ninth Circuit, in a suit under the QTA by the heirs of an Indian allottee challenging the United States' title to a right of way across an allotment, held that the suit was subject to and barred by the 12-year statute of limitations in 28 U.S.C. 2409a(f). *Grosz* v. *Andrus*,

---

[6] In her complaint, respondent included 28 U.S.C. 1346 among the alleged bases of jurisdiction (C.A. App. 2). Subsection (f) of Section 1346 grants the district courts jurisdiction of QTA actions under 28 U.S.C. 2409a(f). Because respondent voluntarily had dismissed her claim for revesting of title on June 16, 1982 (C.A. App. 10), the United States' subsequent motion for summary judgment relied only on 28 U.S.C. 2401 in asserting that the suit is barred by the statute of limitations (C.A. App. 11). The district court, noting that respondent sought only damages (App., *infra*, 9a), held that the suit is barred by 28 U.S.C. 2401(a). The application of that provision therefore was the principal issue discussed in the government's brief on appeal. However, the government's brief also stated that "while not plead below, any action to quiet title to this land is barred as well by virtue of the twelve-year statute of limitations in 28 U.S.C. 2409a(f)." Gov't C.A. Br. 8 n.6. See also *id.* at 9 n.8. After the panel chose to construe respondent's complaint as nevertheless asserting a claim to title, the government addressed the application of the QTA at length in its petition for rehearing with suggestion for rehearing en banc. However, that petition was denied without comment (App., *infra*, 13a).

supra. This divergent treatment of suits challenging the United States' title to land that previously was in allotted status warrants review by this Court.

b. This suit is equally barred by the applicable statute of limitations even if it is treated as one for money damages—which is how the court of appeals chose to allow it to proceed. Viewed in this light, respondent is essentially seeking damages for an alleged breach of the United States' fiduciary duty by the Secretary when the three allotments were sold without her consent. In respondent's view, that sale violated 25 U.S.C. 483. However, such a suit for money damages must be brought under the Tucker Act, 28 U.S.C. 1346(a)(2),[7] on the theory that the payment of compensation is mandated by some other statute, such as 25 U.S.C. 483 or the directive in Section 5 of the General Allotment Act (25 U.S.C. 348) that the Secretary hold the allotment in trust until it is validly conveyed. *United States* v. *Mitchell*, 463 U.S. 206, 219-228 (1983) (*Mitchell II*); but see *United States* v. *Mitchell*, 445 U.S. 535, 540-546 (1980) (*Mitchell I*). Respondent in fact alleged in her complaint that the United States breached its fiduciary duty by selling the land without the consent of all the descendents, heirs, and assigns (C.A. App. 4-5). Respondent also alleged that the sale amounted to a taking of her property for a public use without just compensation, in violation of the Fifth Amendment (C.A. App. 5).[8] Jurisdiction over a suit for just compensation in

[7] The district courts and Claims Court have concurrent jurisdiction over suits for money damages under the Tucker Act where the amount in controversy is $10,000 or less. 28 U.S.C. 1346(a)(2) and 1491. Where the amount in controversy exceeds that amount, the Claims Court's jurisdiction is exclusive.

[8] Respondent did not specifically allege in the complaint that she did not receive her share of the proceeds of the 1954 sale of the allotments in which she held an interest.

those circumstances likewise lies under the Tucker Act. See *Block* v. *North Dakota*, 461 U.S. at 280-281; *Malone* v. *Bowdoin*, 369 U.S. 643, 647 n.8 (1962). However, any such suit necessarily is subject to the six-year statute of limitations in 28 U.S.C. 2401(a).[9]

Section 2401(a) provides that, except as provided under the Contract Disputes Act of 1978, "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." Just as the broad reference in the QTA's statute of limitations to "[a]ny civil action" includes actions filed by Indians, so too the broad reference in Section 2401(a) to "every civil action" includes civil actions filed by Indians—here, a suit under the Tucker Act for money damages.

There is no indication that Congress intended an implied exception from the plain language of Section 2401(a) for Tucker Act suits brought by Indians. To the contrary, in *Mitchell I*, this Court recognized the intent of Congress to treat Indians and non-Indians alike under the Tucker Act. There, the Court considered 28 U.S.C. 1505, which granted the Court of Claims jurisdiction over any claim for money damages against the United States by an Indian tribe. The Court quoted

[9] Respondent also alleged that the Secretary was "negligent" in selling the allotments without the consent of everyone who had an interest in them (C.A. App. 5). Perhaps respondent thereby intended to state a cause of action under the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671 *et seq.* However, any claim under the FTCA is barred unless it is presented to the appropriate federal agency within two years after it accrues or unless the action is begun within 6 months of the notice of final denial of the claim. 28 U.S.C. 2401(b). See 28 U.S.C. 2675. This provision applies to a tort claim by an Indian. *Mann* v. *United States*, 399 F.2d 672, 673 (9th Cir. 1968). There has been no suggestion that respondent submitted a claim to the Department of the Interior within two years of the sale in 1954, and any action under the FTCA would clearly have long since been barred by the time this suit was filed in 1981.

the legislative history of the provision, which stated that the tribal claimants " 'are to be entitled to recover in the same manner, to the same extent, and *subject to the same conditions and limitations,* and *the United States shall be entitled to the same defenses,* both at law and in equity, . . . as in cases brought in the Court of Claims under [28 U.S.C. 1491].' " 445 U.S. at 539 (emphasis added), quoting H.R. Rep. 1466, 79th Cong., 1st Sess. 13 (1945). And it was specifically intended that such Indian tribal claims are to be governed by the six-year statute of limitations in the predecessor to 28 U.S.C. 2501 that is applicable in Tucker Act suits in the Court of Claims under 28 U.S.C. 1491. See *Creation of Indian Claims Commission: Hearings on H.R. 1198 and H.R. 1341 Before the House Comm. on Indian Affairs,* 79th Cong., 1st Sess. 149 (1945) (section-by-section analysis submitted by Felix Cohen).[10] It would appear to follow a fortiori that Tucker Act claims brought in the Court of Claims (now the Claims Court) by individual Indians, which arise directly under 28 U.S.C. 1491 itself, likewise are governed by the six-year statute of limitations in 28 U.S.C. 2501.

Consistent with this view, the Court of Claims and Federal Circuit uniformly have held that suits brought by Indian tribes or individual Indians against the United States under the Tucker Act are subject to the six-year statute of limitations in 28 U.S.C. 2501. In so holding,

[10] The permanent provision for jurisdiction of tribal claims in the Court of Claims was intended to replace the prior regime of special jurisdictional acts. See *United States* v. *Dann,* No. 83-1476 (Feb. 20, 1985), slip op. 6-7. These acts often imposed time limitations for the consideration of Indian claims. See, *e.g.,* Act of June 3, 1920, ch. 222, 41 Stat. 738-739. In addition, Congress in 1946 created the Indian Claims Commission to adjudicate claims arising prior to 1946 (25 U.S.C. (1970 ed.) 70 *et seq.*), but it imposed a five-year statute of limitations on such claims as well. 25 U.S.C. (1976 ed.) 70k.

those courts rejected the proposition that the existence of a fiduciary or trust relationship between the United States and the Indians with respect to the property in question rendered the statute of limitations inapplicable. See, *e.g., Menominee Tribe* v. *United States,* 726 F.2d 718, 721-722 (Fed. Cir.), cert. denied, No. 83-1922 (Oct. 1, 1984); *Hydaburg Co-Op Ass'n* v. *United States,* 667 F.2d 64, 69-70 (Ct. Cl. 1981), cert. denied, 459 U.S. 905 (1982); *Fort Mojave Tribe* v. *United States,* 210 Ct. Cl. 727, 728 (1976); *Andrade* v. *United States,* 485 F.2d 660, 664 (Ct. Cl. 1973), cert. denied, 419 U.S. 831 (1974); *Capoeman* v. *United States,* 440 F.2d 1002 (Ct. Cl. 1971).[11] The holding of the court of appeals that respondent's suit for money damages is not barred by the six-year statute of limitations in 28 U.S.C. 2401(a) that applies to "every civil action" filed in district court, including those under the Tucker Act, directly conflicts with these decisions of the Federal Circuit and Court of Claims.

c. In addition to alleging jurisdiction under 28 U.S.C. 1346, which confers jurisdiction on the district court over quiet title and Tucker Act suits (28 U.S.C.

[11] In *Capoeman,* the Court of Claims rejected the argument that Indians are excluded from the running of the limitations period by the provision in 28 U.S.C. 2501 (which likewise appears in 28 U.S.C. 2401(a)) that the claim of a person "under legal disability or beyond the seas" at the time the claim accrues may be filed within three years after the disability ceases. See 440 F.2d at 1003-1005. The Court of Claims construed this language to refer to a legal disability that impaired the claimant's access to the court. *Id.* at 1004; see also *Goeway* v. *United States,* 222 Ct. Cl. 104, 113 (1979). Respondent clearly was under no such legal disability here; she was as capable of suing in 1955 as she was in 1981. See, *e.g., Poafpybitty* v. *Skelly Oil Co.,* 390 U.S. 365, 368-369 (1968). Cf. *Oneida II,* slip op. 7-8. The existence of this express exception for certain claimants who might be incapable of suing within the six-year period further reinforces the conclusion that Indians who are not under such a particularized disability are, like all other claimants, covered by the statutes of limitations in 28 U.S.C. 2401(a) and 2501.

1346(a)(2) and (f)), respondent also alleged that the district court had jurisdiction over this case under 25 U.S.C. 345 and 28 U.S.C. 1353 (C.A. App. 2). The former Section provides that all persons of Indian blood who are or claim to be entitled to an allotment of land under an Act of Congress, or who claim to have been unlawfully denied or excluded from any such allotment or parcel of land, may prosecute or defend "any action, suit, or proceeding" in relation thereto in the proper district court. Section 1353 of Title 28 provides that the district courts shall have original jurisdiction of "any civil action" involving the right of a person of Indian blood to any allotment of land under an Act of Congress or treaty. Section 1353 is "but a codification" of the provisions of 25 U.S.C. 345 (see *First Moon* v. *White Tail,* 270 U.S. 243, 245 (1926)), and the two therefore should be read in pari materia.

The principal purpose of these provisions obviously was to enable an Indian who claimed to be entitled to an allotment, but who was not granted one by the Secretary, to sue the United States to compel allowance of an allotment. See, *e.g., Arenas* v. *United States,* 322 U.S. 419 (1944). There may be some reason to question whether either 25 U.S.C. 345 or 28 U.S.C. 1353 was intended to provide a basis for jurisdiction over a suit against a third party to recover an allotment that was validly made to an Indian in the first instance but then was conveyed by the United States to that third party under an allegedly erroneous exercise of authority by the Secretary to dispose of allotments held in trust by the United States.[12] But see *Begay* v. *Albers,* 721 F.2d 1274, 1277 (10th Cir. 1983); *Fontenelle* v. *Omaha Tribe of Nebraska,* 430 F.2d 143 (8th Cir. 1970). But however that may be, it is doubtful that Section 345 was ever intended to confer jurisdiction over a cause of action for

[12] We note in this respect that Section 345 provides that the parties to the suit "shall be the claimant and the United States as party defendant."

money damages against the United States in such circumstances, especially since it prescribes a specific remedy of a wholly different sort and would not appear to mandate the payment of compensation. Compare *Mitchell II,* 463 US. at 217.[13]

In *First Moon* v. *White Tail, supra,* the Court held that the predecessor to 28 U.S.C. 1353 did not confer jurisdiction on the district court to entertain an action against the United States and the heir of the original allottee by another Indian who also claimed to be an heir of the allottee but had been determined by the Secretary not to be entitled to an interest in the allotment. The Court explained that the statutory provision "has reference to original allotments claimed under some law or treaty, and not to disputes concerning the heirs of one who held a valid and unquestioned allotment." 270 U.S. at 245. Similarly, in *Affiliated Ute Citizens* v. *United States,* 406 U.S. 128, 142 (1972), the Court stated that "Section 345 authorizes, and provides governmental consent for, only actions for allotment." The Court cited for this proposition not only *First Moon* v. *White Tail, supra,* and *Arenas* v. *United States, supra,* but also two court of appeals decisions that held that Section 345 is limited to suits to determine the rights of a person of Indian blood to an allotment and "gives no general consent of the United States to be sued even in connection with its administration of allotments" (*United States* v. *Preston,* 352 F.2d 352, 355-356 (9th Cir. 1965); *Harkins* v. *United States,* 375 F.2d 239, 241 (10th Cir. 1967)). This case presents no

[13] Section 345 provides that "the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such such allotment had been allowed and approved by him." The latter phrase appears in essentially identical language in the second paragraph of 28 U.S.C. 1353.

question concerning the right of the original allottees to receive an allotment under the General Allotment Act or the Nelson Act; such allotments were made to the persons of whom respondent claims to be an heir. This suit instead is one concerning the United States' "administration of allotments" (*United States* v. *Preston*, 352 F.2d at 356)—namely, the Secretary's sale of the concededly valid allotments without respondent's consent, which respondent maintains was required not by Section 345, but by 25 U.S.C. 483.

For these reasons, jurisdiction over respondent's cause of action against the United States for damages, based either on the allegedly unlawful sale or an alleged failure to distribute respondent's share of the proceeds to her, arises under the Tucker Act, 28 U.S.C. 1346(a)(2), and therefore is barred by the six-year statute of limitations in 28 U.S.C. 2401(a). See *Vicenti* v. *United States*, 470 F.2d 845 (10th Cir. 1972), cert. dismissed, 414 U.S. 1057 (1973). Compare *Antoine* v. *United States*, 637 F.2d 1177, 1181-1182 (1981), opinion after remand, 710 F.2d 477 (8th Cir. 1983). Similarly, insofar as the court of appeals correctly understood respondent to be contesting the title of the United States, it is irrelevant whether respondent might have brought such an action under 25 U.S.C. 345 or 28 U.S.C. 1353 prior to the enactment of the QTA in 1972. The QTA is now the exclusive means by which any person, including an Indian, may obtain an adjudication of the disputed title to land in which the United States claims an interest. See *Block* v. *North Dakota*, 461 U.S. at 284-286. If the result were otherwise, all of the "carefully crafted provisions of the QTA deemed necessary for the protection of the national public interest"—including in the QTA's 12-year statute of limitations—"could be averted." 461 U.S. at 284-285.[14]

[14] To the extent that Congress intended to preserve remedies against the United States under other statutory provisions when it enacted the QTA, it expressly so provided. See note 4, *supra*.

There is no need to consider further, however, whether 25 U.S.C. 345 and 28 U.S.C. 1353 furnish a basis for this suit against the United States. Even if they do, the suit remains barred by the six-year statute of limitations in 28 U.S.C. 2401(a). Section 2401(a) applies to "every civil action" commenced against the United States in district court, not merely actions arising under the Tucker Act. "[A]lthough one purpose of Section 2401(a) was to consolidate parts of the Tucker Act, Congress' adoption of the language 'every civil action' ha[s] gone further: it * * * 'created a general statute of limitations insofar as suits against the United States are concerned.' " *Walters* v. *Secretary of Defense*, 725 F.2d 107, 113 (D.C. Cir. 1983), quoting *Werner* v. *United States*, 188 F.2d 266, 268 (9th Cir. 1951). See also *Impro Products, Inc.* v. *Block*, 722 F.2d 845, 850 n.8 (D.C. Cir. 1983), cert. denied, No. 84-170 (Oct. 29, 1984); *Boruski* v. *United States*, 493 F.2d 301, 304 n.5 (2d Cir.), cert. denied, 419 U.S. 808 (1974); *Screven* v. *United States*, 207 F.2d 740, 741 (5th Cir. 1953).[15]

The court of appeals did not question the proposition that 28 U.S.C. 2401(a) states a general statute of limitations applicable to more than merely Tucker Act suits.

Congress's failure to include 25 U.S.C. 345 and 28 U.S.C. 1353 among these exceptions indicates that any right of action that previously might have existed under those provisions to challenge the United States' title to real property did not survive. In light of this Court's then-recent decision in *Affiliated Ute*, which was rendered on April 24, 1972 and gave Section 345 a narrow reading that would not appear to extend to such quiet title actions against the United States (see page 19, *supra*), it is understandable that Congress did not include an exception for such suits when it enacted the QTA on October 25, 1972, Pub. L. No. 92-562, 86 Stat. 1176. Compare *Block* v. *North Dakota*, 461 U.S. at 282.

[15] Of course if another, more specific statute of limitations applies to a particular suit, such as that under the FTCA or QTA (28 U.S.C. 2401(b) or 2409a(f)), the more specific provision applies.

However, the court of appeals fashioned an implied exception to that provision for suits by Indians, relying on this Court's decision in *Ewert* v. *Bluejacket*, 259 U.S. 129, 137 (1922). App., *infra*, 5a-6a. The court was clearly wrong in finding support for such an exception in *Ewert*.

The Court observed in *Ewert* that the suit by an Indian to recover property conveyed to a person prohibited by statute from purchasing it was not barred by the Oklahoma statute of limitations. See 259 U.S. at 137. However, as this Court observed in *Oneida II* (slip op. 13 n.13), this aspect of the holding in *Ewert* rests on the principle that under the Supremacy Clause, state law time bars do not apply of their own force to Indian land title claims against private parties. *Ewert* does not suggest that *federal* statutes of limitations might not apply to certain Indian land claims—especially those against the *United States*, not merely a private party, as in *Ewert*. In *Oneida II*, the Court in fact held that Indian damage claims even against private parties are subject to an implicit one-year limitations period under 28 U.S.C. 2415(a) and (b) and the Indian Claims Limitations Act of 1982, which begins to run when the Secretary notifies the Indian that he will not bring such an action on behalf of the Indian. *Oneida II*, slip op. 15-16. By their terms, Sections 2415(a) and (b) and the 1982 amendments, which the Court found applicable to the claim in *Oneida*, are concerned with actions "brought by" the United States against non-federal parties (or brought by Indians against such non-federal parties if the United States does not bring suit). As the legislative history of the bills extending the limitations period in 28 U.S.C. 2415 makes clear, that Section applies only to "certain claims of Indian tribes and individuals against parties *other than the United States*" (H.R. Rep. 97-954, 97th Cong., 2d Sess. 3 (1982) (emphasis added)). See also S. Rep. 92-1253, 92d Cong., 2d Sess. 3 (1972); H.R. Rep. 92-1267, 92d Cong. 2d Sess. 4

(1972). Land claims that Indians might have against the United States itself are subject to the generally applicable statute of limitations in the QTA and 28 U.S.C. 2401(a) and 2501. Indians, like all other persons, may sue the United States only under such conditions as Congress may impose.

In contrast to the Eighth Circuit's decision in this case, the Ninth Circuit has held that a suit by an Indian under 28 U.S.C. 345 is subject to the generally applicable statute of limitations in 28 U.S.C. 2401(a). *Christensen* v. *United States*, 755 F.2d 705 (9th Cir. 1985). Accord, *Big Spring* v. *United States*, No. 84-4170 (9th Cir. July 31, 1985); *Loring* v. *United States*, 610 F.2d 649 (9th Cir. 1979). Indeed, the plaintiff in *Christensen* has filed a petition for a writ of certiorari asserting that the Eighth Circuit's decision in this case conflicts with the Ninth Circuit's holding in *Christensen*. See 85-372 Pet. 6.

3. As we have explained above—whether this case is viewed as one to quiet title, recover money damages, or obtain an allotment—the decision below directly conflicts with decisions of other courts of appeals that have held that suits by Indians against the United States are subject to the generally applicable statute of limitations that governs each of those types of suits. These multiple circuit conflicts warrant resolution by this Court. The decision below also introduces considerable confusion into this area as regards the possible sources of jurisdiction over suits against the United States, and even against private parties, based on past transfers of trust or restricted Indian lands.

The questions presented also are of considerable practical importance. The so-called "Secretarial Transfer" cases, such as this one, represent a substantial number of potential Indian land claims. We have been informed by the Department of the Interior that more than 1000 allotments have been identified in the Aberdeen and

Minneapolis BIA areas alone in which transfers were made without the consent of all the heirs. We have been further informed that in excess of 15,000 acres in the Chippewa National Forest were acquired by the Department of Agriculture in transactions similar to those challenged by respondent here.

Similar issues arise in connection with "Forced Fee" cases, in which fee patents were issued to Indians who allegedly were not competent to receive them and the land then was sold to non-Indians. H.R. Rep. 97-954, *supra*, at 7. The statute of limitations issue has been raised in over 40 pending "Forced Fee" actions that already have been filed by individual Indians against the United States and that involve claims for land or money damages based on an allegedly void transfer of a restricted allotment.[16] The uncertainty occasioned by these and a potentially enormous number of other claims against the United States arising out of such past transactions involving Indian land warrants resolution by this Court of the important questions presented. See claims listed at 48 Fed. Reg. 13698-13920, 51204-51268 (1983); *Oneida II*, slip op. 15-16 n.15.

---

[16] Several of these cases were dismissed on statute of limitations grounds, but an appeal has been taken from that dismissal. See *Nichols* v. *Rysavy*, Civ. No. 83-5002 (D.S.D. May 10, 1985), appeal pending, No. 85-5234 (8th Cir.).

CONCLUSION

The petition for a writ of certiorari should be granted.
Respectfully submitted.

CHARLES FRIED
Acting Solicitor General
F. HENRY HABICHT II
Assistant Attorney General
LOUIS F. CLAIBORNE
Deputy Solicitor General
EDWIN S. KNEEDLER
Assistant to the Solicitor General
DAVID C. SHILTON
J. CAROL WILLIAMS
Attorneys

SEPTEMBER 1985

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 83-2582

FLORENCE BLACKETTER MOTTAZ, ON BEHALF OF HERSELF AND ALL OTHERS SIMILARLY SITUATED, APPELLANTS

v.

UNITED STATES OF AMERICA, APPELLEE

Submitted: June 11, 1984
Decided: January 18, 1985

Before HEANEY, JOHN R. GIBSON and FAGG, Circuit Judges.

HEANEY, CIRCUIT JUDGE.

Florence Blacketter Mottaz[1] appeals the district court's dismissal of her "Secretarial Transfer"[2] suit against the United States on the ground the twenty-seven-year-old claim was time-barred by 28 U.S.C. § 2401(a) (1982). For the reasons set forth below, we reverse and remand.

---

[1] Mottaz seeks to represent a class of similarly situated allottees, but her claim was dismissed before the class was certified.

[2] A "Secretarial Transfer" claim involves the Department of Interior's sale, pursuant to 25 U.S.C. §§ 483, 404 or 379 (1982), of restricted Indian allotments without the consent of all the beneficial heirs as allegedly required by these statutes and Department of Interior rules, regulations and policies. *See* 48 Fed.Reg. 13698-99 (1983).

I. BACKGROUND

On December 5, 1905, three Chippewa Indian ancestors of plaintiff Florence Blacketter Mottaz received eighty-acre trust allotments on the Leech Lake Reservation in Cass County, Minnesota, pursuant to the General Allotment Act of February 8, 1887, 25 U.S.C. §§ 331-334, 339, 341, 342, 348, 349, 354, 381 (1982) and the Nelson Act of January 14, 1889, 25 Stat. 642. These ancestors were her mother, Esther Taylor, a/k/a Esther Grasshopper; her mother's sister, Mary Knickerbocker; and the latter's son, David Knickerbocker. Title to their allotments was held in trust by the United States for periods which were eventually extended indefinitely. *See* 25 U.S.C. § 462 (1982). Mottaz inherited one-fifth of the Taylor allotment and one-thirtieth of the Knickerbocker allotments. In the early 1950's, some, but not all, of the heirs with fractional holdings petitioned the Department of Interior, pursuant to 25 U.S.C. § 483 (1952), to sell their allotments. Mottaz claims that this statute and Department of Interior regulations and policies prevent the Secretary of Interior from selling the allotment interest of a non-consenting owner. In May, 1953, the United States Department of the Interior's Office of Indian Affairs sent to Mottaz forms which were captioned "Consent to Sale of Inherited Lands" for her Taylor and Knickerbocker allotments. The letters which accompanied the consent forms read in relevant part:

> Some of the owners have requested the sale of this land. We have appraised both land and timber, if any, and as soon as we get the consent to sell, an effort will be made to obtain a buyer by advertising for sale bids. This land will not be sold unless the high bid is equal to, or more than, the appraisal value. *If no reply is received from you within ten (10) days, it will be assumed that you have no objection to the sale.* [Emphasis added.]

Mottaz did not sign and return the consent forms to the Office of Indian Affairs.

Although apparently fewer than one-half of the Indian land-owners who received the notices returned them consenting to the sale, the government nonetheless sold the land in 1954. All three of the Mottaz allotments were sold to the United States Forest Service and they are now included within the Chippewa National Forest. Mottaz claims that she did not consent to the sale of her land, and that she did not receive payment for it. The government claims that she did receive payment in 1955.

in 1967, Mottaz visited the Bureau of Indian Affairs (BIA) and received a list of all her allotment interests. The list did not show that she had an interest in the Taylor or two Knickerbocker allotments. In 1981, she again requested from the BIA a list of her allotment interests. The BIA indicated that she had held an interest in the Taylor and Knickerbocker allotments and that she might have a "Secretarial Transfer" claim under the "2415 Land Claims Project" [3] on the ground her land was sold without her consent.

On December 30, 1981, Mottaz filed a complaint in United States District Court on her own behalf and on behalf of other Indians with similar secretarial transfer claims. Her complaint alleged that the Taylor and Knickerbocker allotments were sold without her consent and thus their sale was illegal and void, that her property had been taken without due process and just compensation, and that the BIA's sale of the allotments without her consent was negligent and a breach of fiduciary duty. She sought damages in the amount of the fair market value of the Taylor and Knickerbocker allotments or rescission of their sale with title to revest

---

[3] *See* 48 Fed.Reg. 13698 and *Covelo Indian Community* v. *Watt*, 551 F.Supp. 366 (D.D.C.1982).

in the heirs. Following a pretrial hearing on June 6, 1982, Mottaz withdrew her demand for rescission of the sale leaving only her demand for money damages in the amount of fair market value of the land. We do not, however, read this amendment of her complaint to mean that she abandoned the gist of her complaint which was that the sale of her land was illegal and void and did not transfer title. Rather, for practical reasons, she sought the equivalent of the land in damages rather than a return of the land itself.

On October 7, 1983, the district court granted the government's motion for summary judgment on the ground that Mottaz's action was barred by the six-year statute of limitations of 28 U.S.C. § 2401(a) (1982). The court cited no case where a court held that secretarial transfer claims are time-barred by section 2401, but relied on the following plain language of the statute:

> Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues.

The court held that Mottaz's cause of action accrued when she learned of the sale in 1954, and because she did not file suit until 1981, her suit was barred. This appeal followed.

II. DISCUSSION

The parties below agreed that the summary judgment motion would address only "procedural issues" and not the underlying "substantive issues." This prevented the district court from fully considering whether Mottaz's claim was time-barred.

[1, 2] It has been well established since *Ewert* v. *Bluejacket*,[4] 259 U.S. 129, 42 S.Ct. 442, 66 L.Ed. 858 (1922),

---

[4] In *Ewert*, the Court held that the

> Court of Appeals * * * while properly regarding the limitations statutes of Oklahoma as inapplicable, held the adult heirs were barred by laches in failing to institute suit after delivery of the deed to the land. In this the court fell into error.
>
> * * * The purchase by Ewert being prohibited by the statute was void. * * * He still holds the legal title to the land and the equitable doctrine of laches, developed and designed to protect good faith transactions against those who have slept upon their rights, with knowledge and ample opportunity to assert them, cannot properly have application to give vitality to a void deed and to bar the rights of Indian wards in lands subject to statutory restrictions.

259 U.S. at 137-38, 42 S.Ct. at 444 (citations omitted).

and *Hampton* v. *Ewert*,[5] 22 F.2d 81 (8th Cir. 1927), *cert. denied*, 276 U.S. 623, 48 S.Ct. 303, 72 L.Ed. 737 (1928), that a sale of restricted allotment land in violation of the federal restrictions on its alienability does not transfer title, and that the allottee or her heirs may not be barred by state statutes of limitation or laches from bringing suit to establish that they retain title to the land. *Haymond* v. *Scheer*, 543 P.2d 541, 545 (Okla. 1975);[6] *Smith* v. *Williams*, 78 Okla. 297, 190 P. 555, 557 (1920); *cf. Antoine* v. *United States*, 637 F.2d 1177, 1179-81 (8th Cir. 1981).

[3] The parties cite no case which squarely considered whether *Ewert* prevents the application of *federal* stat-

---

[5] In *Hampton*, 22 F.2d at 92, this Court held that an action to recover the value of minerals taken under an invalid lease of allotment land was not barred by laches because the principle set forth in *Ewert* v. *Bluejacket* "applies equally to all transactions which are void because of failure to observe statutory restrictions" on the alienability of allotment land.

[6] In *Haymond*, 543 P.2d at 545, the court held that

> A conveyance of allotted restricted Indian lands made in violation of a federal statute authorizing the alienation of such lands is against public policy and absolutely void, and in no manner [including the passage of time] can any right, title or interest in such land be acquired under such a conveyance.

Quoting Miller v. *Tidal Oil Co.*, 106 Okla. 212, 233 P. 696 (1925).

utes of limitation. However, we agree with amicus that Congress has not repudiated its policy of protecting Indian land by providing that claims against the United States for title to wrongfully alienated allotments are barred by a statute of limitations. The district court relied upon the general statute of limitations for claims against the United States set forth in 28 U.S.C. § 2401 (1982). This statute provides that all civil actions commenced against the United States are barred unless filed within six years after the cause of action first "accrues." However, this statute does not bar claims of title to allotments because *Ewert* is based on the principle that, if the underlying sale of land is void, the concept that a cause of action "accrues" at some point is inapplicable because the allottee simply retains title all along.

The government argues, however, that Mottaz does not seek simply to establish title to the Taylor and Knickerbocker allotments, but seeks to obtain damages for the government's alleged negligence and breach of fiduciary duty. Although we agree that Mottaz's complaint is not particularly well-drafted, we believe it must be read as raising the one essential claim that her land was sold without her consent, that she did not receive payment for her land, and that accordingly the sale was void and she retains title to the land. We believe that, on the narrow facts of this case, her claim for damages in the amount of the fair market value of the land must be construed as equivalent to a claim for return of the land itself. If the government sold Mottaz's land to the United States Forest Service without her consent and without sending her fair compensation, then, in light of the land's subsequent incorporation within an inaccessible national forest where the land has little value to Mottaz, as a matter of policy, we believe it is a fair and practical remedy, on the narrow facts alleged here, for

Mottaz to seek compensation rather than return of the land.[7]

[4] Thus, the statute of limitations issue cannot be resolved until several underlying factual and legal predicates are resolved. First, the district court must determine whether 25 U.S.C. § 483 (1952) and Department of Interior rules, regulations and policies in effect in 1953 prevented the Secretary of Interior from selling Mottaz's land without first obtaining her consent. If so, it must determine whether Mottaz consented to the sale. We hold that her failure to return the "Consent to Sale" form does not constitute consent. However, if she received payment for the land in 1955, then, on the facts of this case, we believe it may be assumed that she consented to the sale and thus that she does not have a cause of action. The government must bear the burden of proving that it paid Mottaz and therefore that it holds valid title to the Taylor and Knickerbocker allotments.[8] If the government did not pay Mottaz, then it does not hold title to her allotments until she receives payment

---

[7] In other words, Mottaz's complaint alleges that her land was sold without her consent and that she should at least receive payment for the land. If the government failed to send her payment, then, until it does so, it has not acquired title to the Knickerbocker and Taylor allotments. In effect, she seeks the payment for the land which she claims she never received.

[8] The district court found that Mottaz "received her share of the proceeds in 1955." *Mottaz* v. *United States,* No. 3-81-1098, slip op. at 1 (D.Minn.1983). We find nothing in the record which supports this finding, and the parties at oral argument agreed that whether or not Mottaz received payment for the land has not yet been established. The government argued that the payment records may be difficult if not impossible to recover and that this is a good reason why a statute of limitations should bar Mottaz's claim. However, in light of the government's apparent sale of Mottaz's land without her consent as allegedly required by 25 U.S.C. § 483, we find that it is reasonable to require the government at least to prove that it paid for the real estate it now claims to own. Indeed, another factor

equal to the fair market value of the land. In light of the land's inclusion within the Chippewa National Forest and the thirty years which have passed since the sale, we find that if Mottaz's claims have merit, then she may force the government to pay her the fair market value of the land rather than to simply return the land itself.

Reversed and remanded for further proceedings consistent with this opinion.

---

behind the *Ewert* principle is that it is generally expected that records necessary to prove title to land will be kept indefinitely unlike records concerning torts, contracts or other causes of action.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Civil File No. 3-81-1098

FLORENCE BLACKETTER MOTTAZ, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

MEMORANDUM ORDER

This matter is before this court upon defendant's motion for summary judgment. A hearing was held before the undersigned on September 23, 1983. Derck Amerman, Esq., and Leonard Zolna, Esq., appeared on behalf of plaintiff. Larry Martin Corcoran, Esq., and Mariana Shulstad, Esq., appeared on behalf of defendant.

This action arises out of the sale of land by the Bureau of Indian Affairs (BIA) in 1954. Plaintiff is an heir to Chippewa Indians who, in 1905, received land allotments on the Leech Lake Indian Reservation in Cass County, Minnesota. The land allotments were held in trust by the United States for the benefit of the heirs of the original grantees. In 1954 the (BIA) decided to sell the allotments and distribute the proceeds to the heirs. All the living heirs, including the plaintiff, were notified of the proposed sale and given time to object. The plaintiff did not object to the sale and she received her share of the proceeds in 1955. The plaintiff now seeks damages for the sale on the ground that it was made without her consent and is void.

The defendant argues that the plaintiff's claims are barred by 28 U.S.C. § 2401. This court agrees. 28 U.S.C. § 2401(a) provides that:

> Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues.

Plaintiff filed this action in 1981, twenty-seven years after the land was sold and twenty-six years after the proceeds were distributed to her by the (BIA). The essence of the plaintiff's complaint is that the land was sold without her consent. Even if that were true, the plaintiff's claim is still barred because the sale occurred nearly a quarter century before the commencement of this action. The plaintiff's cause of action accrued when she learned of the sale. The deposition of the plaintiff clearly reveals that she had knowledge of the sale in 1954.

The plaintiff argues that 28 U.S.C. § 2401(a) does not apply to suits by Indians for breach of a fiduciary duty. That argument is untenable. By its very terms 28 U.S.C. § 2401(a) applies to *"every civil action commenced against the United States. . . ."* The present action is a civil action against the United States and is governed by the six-year statute of limitations contained in 28 U.S.C. § 2401(a).

Plaintiff also argues that 28 U.S.C. § 2415 overrides the statute of limitations contained in 28 U.S.C. § 2401(a). 28 U.S.C. § 2415 applies to actions brought *on behalf of* a recognized tribe or individual Indian. In *Oneida Indian Nation of New York State* v. *County of Oneida,* 94 S.Ct. 772 (1974), the Supreme Court permitted an Indian tribe to bring an action. However, the Court did not interpret 28 U.S.C. § 2415 to permit

claims *against* the United States. Claims against the United States are governed by 28 U.S.C. § 2401(a).

For the reasons stated above, IT IS HEREBY ORDERED that:

1. Defendant's motion for summary judgment is granted.

Dated: October 6, 1983.

/s/ PAUL A. MAGNUSON

Paul A. Magnuson
United States District Judge

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

JUDGMENT

No. 83-2582	*	SEPTEMBER TERM 1984
Florence Blacketter Mottaz, on behalf of herself and all others similarly situated,	*	
Appellants,	*	
v.	*	Appeal from the United
United States of America,	*	States District Court for
Appellee.	*	the District of Minnesota

This appeal from the United States District Court was submitted on the record of the said District Court, briefs of the parties, and was argued by counsel.

After consideration, it is ordered and adjudged that the judgment of the said District Court in this cause is hereby reversed and the cause remanded for further proceedings in accordance with the opinion of this Court.

January 18, 1985

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SEPTEMBER TERM, 1984

No. 83-2582-MN.

FLORENCE BLACKETTER MOTTAZ,
ETC., ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of Minnesota

Appellee's petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

April 29, 1985

APPENDIX E

STATUTORY PROVISIONS INVOLVED

1. 25 U.S.C. 345 provides:

Actions for allotments

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, but this provision shall not apply to any lands now held by either of the Five Civilized Tribes, nor to any of the lands within the Quapaw Indian Agency: *Provided,* That the right of appeal shall be allowed to either party as in other cases.

2. 25 U.S.C. 483 provides:

Sale of land by individual Indian owners

The Secretary of the Interior, or his duly authorized representative, is authorized in his discretion, and upon application of the Indian owners, to issue patents in fee, to remove restrictions against alienation, and to approve conveyances, with respect to lands or interests in lands held by individual Indians under the provisions of sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title, or subchapter VIII of this chapter.

3. 28 U.S.C. 1353 provides:

Indian allotments

The district courts shall have original jurisdiction of any civil action involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any Act of Congress or treaty.

The judgment in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him; but this provision shall not apply to any lands held on or before December 21, 1911, by either of the Five Civilized Tribes, the Osage Nation of Indians, nor to any of the lands within the Quapaw Indian Agency.

4. 28 U.S.C. 2401 provides:

Time for commencing action against United States

(a) Except as provided in the Contact Disputes Act of 1978, Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first

accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) a [A] tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

5. 28 U.S.C. 2409(a) provides in pertinent part:

Real property quiet title actions

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title [28 USCS §§ 1346, 1347, 1491, or 2410], sections 7424, 7425, or 7426 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 7424, 7425, and 7426), [26 USCS §§ 7424, 7425, and 7426], or section 208 of the Act of July 10, 1952 (43 U.S.C. 666) [43 USCS § 666].

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part

thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

* * * * *

(f) Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

6. 28 U.S.C. 2501 provides:

Time for filing suit

Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.

Every claim under section 1497 of this title [28 USCS § 1497] shall be barred unless the petition thereon is filed within two years after the termination of the river and harbor improvements operations on which the claim is based.

A petition on the claim of a person under legal disability or beyond the seas at the time the claim accrues may be filed within three years after the disability ceases.

A suit for the fees of an officer of the United States shall not be filed until his account for such fees has been finally acted upon, unless the General Accounting Office fails to act within six months after receiving the account.